REMARKS

Applicant thanks the Examiner for the Supplemental Office Action Summary (Form PTOL-326) mailed February 20, 2005, and acknowledging receipt of Applicant's claim for foreign priority and also receipt of the certified priority document.

Applicant respectfully traverses the rejection of claims 1, 2 and 5 under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Fogelhohm '043 **(newly cited)** in view of Kelly '678, and the final rejection of claim 4 under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Fogelhohm '043 in view of Kelly '678 and further in view of Chang '938.

The basis for this traverse is that Applicant respectfully disagrees with the Examiner's interpretation of Fogelhohm's teaching/disclosure, as presented at page 2, paragraph 3, of the final Office Action.

In support of this interpretation, the Examiner refers to "Fig. 4" and "cols. 3-4" of Fogelhohm. Since the undersigned attorney could not find in these cited portions of Fogelhohm the following two last limitations of independent claim 1:

> if said chargeable dynamic signaling port has not been activated or has been deactivated, setting up an assigned chargeable dynamic signaling port, of said trunk connecting two exchanges, for use by said application, or
>
> if said chargeable dynamic signaling port has already been set up, making an assigned chargeable dynamic signaling port available for immediate use only by said application,

the attorney called Examiner Stevens on April 6, 2005 and conducted a telephone interview in an attempt to gain an understanding of the Examiner's interpretation of Fogelhohm's teaching as presented in the Office Action at page 2, paragraph 3.

Examiner Stevens referred the attorney to an additional passage, column 5, in Fogelhohm, and in particular to column 5, lines 1-35, with the comment that this passage "inherently teaches" the above-quoted last two limitations of independent claim 1.

However, even after having studied this additional passage, Applicant still does not find in Fogelhohm any teaching, or even suggestion, of these two last limitations of claim 1.

According to Applicant's claimed invention (claim 1), an application has either:

no right at all;

or a right to have any port set up and then to use it;

or a right to use a port which has already been set up by another application.

In other words, a non-urgent application is kept waiting until there is some bandwidth available on a port set up by another application which has the right of setting up and using a port without delay.

Applicant respectfully submits, notwithstanding the Examiner's assertion to the contrary, that Fogelhohm '043, and Kelly '678 and Change '938 do **not** teach, or even remotely suggest, a right which is **limited to using a port which has already been set up by another application**.

Because of the possibility of assigning such a limited right to an application, the claimed method achieves the following objective as stated on page 2, lines 15-19 of Applicant's specification:

> It has therefore become necessary to be able to monitor the use of such chargeable dynamic ports to prevent them being set up and used by applications, for example periodic maintenance or management applications, for non-urgent transmissions, possibly at

> low bit rates. Using ports set up in this way can hardly be economic."

Thus, the claimed method provides the following **novel and unobvious and unexpected result**, as stated in Applicant's specification at page 4, lines 29-31:

> to ensure as complete as possible use of the traffic capabilities offered by this port during the time for which said port remains active.

Kelly merely teaches the concept, known *per se*, of setting up and deactivating a port on demand; see Applicant's specification at page 3, lines 16 and 17.

Because of the above-described deficiencies in the disclosure of the **primary** reference, Fogelhohm, Applicant respectfully submits that the Examiner has failed to make out a *prima facie* case of obviousness of the subject matter of claims 1, 2 and 5, as it is clear that the applied combination of references does not teach, or even remotely suggest, the above-quoted last two limitations of claim 1. Furthermore, even if, for some unknown reason, a person of ordinary skill in the art were "to adapt to Fogelhohm's system activation...", there would not be produced the subject matter of independent claim 1 or of its dependent claims 2 and 5.

The above amendments to claims 1 and 2 are made only in an attempt to clarify to the Examiner the subject matter being claimed, and are not made for the purpose of overcoming the prior art rejection.

The rejection of claim 4 under 35 U.S.C. § 103(a) also is respectfully traversed. Because of the above-noted deficiencies in the teaching of the Fogelhohm/Kelly combination, Applicant

respectfully submits that, even assuming that Chang teaches "assigning rights of use in time [periods] that can be changed", the subject matter of claim 4 would not have (and could not have) been obvious from the Fogelhohm/Kelly/Chang combination. Furthermore, even if for some reason the person of ordinary skill were to combine the teachings of these references, there would not be produced the subject matter, taken as a **whole**, of dependent claim 4.

In summary, then, Applicant respectfully requests the Examiner **carefully** to reconsider, and to withdraw, the rejections of claims 1, 2, 5 and 4 under 35 U.S.C. § 103(a), by taking into consideration the above technical analysis of the deficiency in the disclosure/teaching of the primary reference, Fogelhohm '043.

On page 4, paragraph 1, of the Office Action, the Examiner states that dependent claim 3 would be allowable if rewritten in independent form. Applicant has rewritten claim 3 in independent form, whereby Applicant respectfully submits that **claim 3 now is allowable**.

REQUEST FOR RECONSIDERATION AND WITHDRAWAL OF FINALITY OF ACTION

Even though Examiner Stevens made "final" the Office Action, the Examiner does not even allege that Applicant's previous amendment provoked the citation of Fogelhohm (newly cited). In fact, the Examiner could not have made such an allegation, because the previous amendments were characterized in Applicant's "REMARKS" as being only "**clarifying amendments**".

The only amendment to **claim 1** that could even conceivably be considered as being of substance is the clause "deactivated on demand", and this clause certainly did not provoke the

citation of the **new** Fogelhohm reference in the rejection of claim 1, as this clause refers to a *per se* conventional, known function (see Applicant's specification at page 3, lines 16-17: "Chargeable and dynamic signaling ports can be set up and deactivated on demand and as required. This is known in the art"). Kelly also shows that this function is known.

Thus, since the previous amendment of **claim 1** did **not necessitate a new search and the citation of a new reference**, Applicant respectfully requests the Examiner to reconsider and withdraw the finality of the present Office Action, so that Applicant will have the right to make any amendments which may be necessary to obtain an allowance of the application.

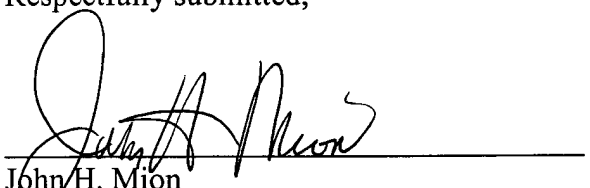
REQUEST FOR INTERVIEW

If for any reason the Examiner feels that the application is not in condition for allowance with all of claims 1-5, Applicant requests the Examiner to **call the undersigned attorney** to discuss any unresolved issues and to expedite the disposition of the application. (In this regard, Applicant notes that this application was filed on June 29, **2000**, and has received four Actions on the merits!)

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees

under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,



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Date: May 2, 2005